

(Originally issued: September 24, 1988)

**LETTERS OF RECOMMENDATION:
CHARACTER TESTIMONY**

AUTHORITY: Canons 2, 4 and 5

I. Background

The Committee on Judicial Ethics has received a variety of inquiries concerning letters of recommendation. A judge may write letters of character recommendation only in response to a summons or official request, but may write letters of recommendation based on factual experience if there is no inference of special influence on the judge, and no use of the judicial office to promote a business or commercial product.

II. Question No. 1

A judge's stepson is a party to a pending marital dissolution. Custody of a child is at issue. May the judge at the stepson's request write a letter of recommendation to the court to the effect the stepson is a person of good character?

Answer

No.

Discussion

Canon 2B directs in part that judges not lend the prestige of their office to advance the private interest of others. Further, the Canon directs that judges not testify voluntarily as character witnesses. The Canon does not preclude testimony as a percipient witness. The Commentary explains that a judge's character testimony injects the prestige of office into the proceeding and may be misunderstood as an official testimonial. However, the Canon does not afford judges a privilege against testifying in response to an official summons.

In the inquiry submitted, there has been no request for input from the judge by the court hearing the dissolution or any agency charged with an official duty, nor does it appear that the requested letter seeks information of a factual nature about which the judge might testify from personal knowledge. The concerns raised in the Commentary to Canon 2 are evident: a judge writing to another judge to attest to the character of a party may taint the integrity of the custody proceeding and is an undue use of the prestige of office. In the opinion of the Committee, therefore, it is inappropriate for the judge to submit the requested letter absent a summons or other official request from an appropriate agency.

Question No. 2

May a judge write a letter to the Governor recommending the judicial appointment of an attorney with whom the judge had formerly practiced law? The judge is familiar with the qualifications, skills and character of the attorney.

Answer

Yes.

Discussion

Although such a letter is clearly intended to advance the private interests of another, this inquiry requires the further recognition of Canon 2B(3), which provides:

A judge may respond to judicial selection inquiries, provide recommendations (including a general character reference, relating to the evaluation of persons being considered for a judgeship) and otherwise participate in the process of judicial selection.

The letter would offer specific knowledge of the personal and professional qualities pertinent to performance as a judge. The judge is thus uniquely able to contribute insight to the judicial selection process and thereby to the administration of justice. The Committee is of the opinion that the judge may write this requested letter.

Question No. 3

May a judge write a letter of recommendation to an educational institution on behalf of an attorney who has appeared before the judge and who is leaving the practice of law to resume a career in teaching? Secondly, the judge inquires whether the judge may write a letter of recommendation for the judge's clerk who is leaving public employment after working with the judge for several years.

Answer

Yes.

Discussion

Again it appears that these requested letters would advance the private interests of others. Canon 2B(4) provides in pertinent part, as follows:

...a judge may serve as a reference or provide a letter of recommendation only if based on the judge's personal knowledge of the individual. These written communications may include the judge's title and be written on stationery that uses the judicial title.

To the extent that each of the requested letters would supply specific factual information and experience, each letter is more than a mere character reference. Further, the judge's experience was gained in the course of official duties; that context explains the basis for the judge's experience, and is not an injection of the prestige of office simply for private advantage. For these reasons, the Committee is of the opinion that a judge may accommodate the request for a letter in each of these instances.

Question No. 4

May a judge write a letter on behalf of a person who appeared before the judge as a juvenile, and whom the judge has had occasion to see mature in the time since that appearance? The judge is of the opinion that the person is now responsible; the person is seeking employment with an agency of the State of California.

Answer

No.

Discussion

Although the judge in this instance has some basis in experience with the person seeking the letter of recommendation, there is nothing in the inquiry to suggest that the judge is familiar with the job skills possessed by the person. Instead, this inquiry does suggest that the letter is requested in order to inject the prestige of office into the job application process. Such a letter would serve to advance the private interest of another, and there is no countervailing consideration that qualifies the letter as appropriate. For these reasons, the Committee is of the opinion that it would be improper to provide the letter requested in this inquiry.

Question No. 5

May a judge provide a letter recognizing the skill and abilities of an attorney who wishes to retire from the active practice but remain available for purposes of consultation in litigation? The attorney wishes to include the judge's comments in an advertising brochure for distribution primarily to other attorneys.

Answer

No.

Discussion

Again, the judge's comments would be designed to advance the private interests of another. Canon 2B provides in pertinent part as follows:

- (1)...nor shall a judge convey or permit others to convey or permit others to convey the impression that any individual is in a special position to influence the judge.
- (2) A judge shall not lend the prestige of judicial office to advance the pecuniary or personal interests of the judge or others;

In the opinion of the Committee, a commentary praising the abilities of an attorney-consultant creates the impression that individual is in a special position to influence the judge. Finally the use of the judge's name would justify a reasonable inference that the power or prestige of office is being utilized to promote business interest of the attorney-consultant. The Committee believes this requested letter would violate the proscriptions of the cited Canon.

This opinion is advisory only. The Committee acts on specific inquiries submitted, and its opinion is based on facts as set forth in the submitted inquiry.

COMMITTEE ON JUDICIAL ETHICS
September 24, 1988